



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

Matter of: HEI Inc.  
File: B-228482  
Date: January 25, 1988

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### DIGEST

1. Protester's argument that awardee's offered equipment should be subject to testing requirements imposed upon protester's equipment in prior procurements is without merit. Agency is required to base its evaluation of proposals (and therefore offered equipment) solely upon evaluation criteria stated in solicitation. Where no testing requirement is imposed by the solicitation, no such demand can later be imposed upon an awardee.
2. Protest that awardee's equipment fails to technically conform to solicitation's specifications is denied where agency demonstrates that it had a reasonable basis for determining that awardee's proposed equipment conformed to the terms of the solicitation and protester has offered no evidence to the contrary.
3. Protest that awardee's license to score a particular psychological test is due to expire before the end of the contract term is dismissed, since the awardee has a present ability to perform under the contract in accordance with the technical specifications (including the licensing requirement) and the possible future expiration of the awardee's license is a matter of contract administration which will not be reviewed by this Office.

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### DECISION

HEI Inc., protests the award of a contract to National Computer Systems, Inc. (NCS), under request for proposals (RFP) No. N68860-87-R-0044 issued by Department of the Navy for the acquisition of a quantity of optical scanners together with an equal quantity of code lock/security devices. The protester argues that the product offered by

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NCS has not been independently tested and does not technically conform to the specifications.

We dismiss the protest in part and deny it in part.

The solicitation called for offers for 21 optical scanners and code lock/security devices to be used by the Defense Activity for Non-Traditional Education Support (DANTES) in connection with the scoring of various standardized tests such as the DANTES Subject Standardized Tests (DSST), the College Level Examination Program (CLEP) and the Strong-Campbell Interest Inventory (SCII). The optical scanners are used to read and score standardized-format answer sheets for the above mentioned tests. The code lock/security devices are used to store scoring algorithms--the answers to the tests being administered--and insure that they cannot be observed or tampered with; under the specifications, any attempt to observe or tamper with the algorithms is to result in destruction of the algorithms by the code lock/security device. The specifications also required that the code lock/security device be removable from the scanner when not in actual use.

With respect to the tests being scored, the solicitation required that compatible software for scoring the tests to be administered be available for at least 3 years. The provision of the solicitation was added by amendment when it came to the attention of the contracting agency that NCS's license to score the SCII was due to expire in June 1988.<sup>1/</sup> Best and final offers (BAFOs) were requested subsequent to the issuance of this amendment and, upon receipt of BAFOs, it was determined that NCS had submitted the lowest technically conforming offer. Award was thereafter made to NCS on September 30, 1987. We note that the contracting officer requested, and NCS agreed, to insert a provision into any resulting contract requiring that the contractor refund a pro rata portion of the total contract price to the government in the event that it could not score the SCII.

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<sup>1/</sup> The SCII is a psychological test developed and owned by Stanford University Press. Stanford University Press has granted an exclusive license to Consulting Psychologists Press, Inc. to sell and distribute the SCII, and to grant sub-licenses which may be necessary in that connection. By letter dated June 5, 1987, Consulting Psychologists Press, Inc. notified NCS (in accordance with the requirements of the existing licensing agreement between it and NCS) that its license to score the SCII would expire on June 30, 1988.

The protester first argues that the equipment offered by NCS has not been subject to the rigorous testing which its equipment had undergone in previous procurements. According to the protester, even though the solicitation did not require this testing, as a matter of "fairness," the NCS equipment should be subjected to the same testing that HEI's equipment has undergone.

The agency responds simply that the solicitation contained no prequalification testing requirement and, accordingly, HEI's demand for such testing cannot serve as a basis to object to the award made to NCS.

We agree with the agency. It is a well settled principle of government procurement that all offerors must be treated equally and be provided a common basis for the preparation and submission of their proposals. See JG Engineering Research Associates, B-224892.2, Mar. 3, 1987, 87-1 CPD ¶ 239. This does not mean, however, that because HEI was required in previous procurements to subject its equipment to testing, the agency was bound to include these same testing requirements in the instant solicitation; the acceptability of proposals under this RFP depended upon the evaluation criteria specified therein and not upon the criteria established in prior procurements. Alfa-Laval, Inc., B-221620, May 15, 1986, 86-1 CPD ¶ 464. In the final analysis, an agency must evaluate proposals on the basis of the factors and requirements specified in the solicitation under which those proposals were submitted, Cardkey Systems, B-220660, Feb. 11, 1986, 86-1 CPD ¶ 154, and any previous testing requirements to which HEI's equipment was subjected cannot be carried over to this solicitation because such a requirement was not imposed under this RFP. Ingersoll-Rand Co., B-224706, Dec. 22, 1986, 86-2 CPD ¶ 701. Indeed, we would view any demand by the agency upon NCS to subject its equipment to testing requirements imposed under prior solicitations to be "unequal" or "unfair" treatment of the firm within the context of this procurement, since no such requirement had been imposed by the RFP's terms. Id. Accordingly, we deny this basis of protest.

HEI next contends that the product offered by NCS failed to conform to the technical specifications contained in the solicitation in three respects. Specifically, HEI contends that the NCS "Scorebox"--its code lock/security device--cannot be easily disconnected from the optical scanner as required by the RFP's specifications, that the security system offered by NCS does not provide for erasure of the scoring algorithms in the event of tampering as required under the RFP and that it cannot meet the licensing requirements imposed by amendment No. 0002 to the solicitation

since NCS's license to score the SCII expires in June 1988. We address each of these allegations separately below.

With respect to the allegation that the NCS Scorebox cannot be easily disconnected from the firm's optical scanner, HEI states that its code lock/security device is a cartridge-type device which slides easily in and out of its optical scanner and can be easily stored in a safe or other secure place. By contrast, HEI states that the NCS Scorebox is a large unit and that disconnecting it is more like disconnecting a printer or other piece of peripheral equipment from a computer. Accordingly, the protester argues that the NCS Scorebox does not comply with the RFP's specification as to the removability of the code lock/security device which states that "[t]he security device/code lock must be capable of containing and processing multiple instruments and can be removed from the scanner when not in actual use."

The agency responds that HEI's admission that the NCS Scorebox is removable from NCS's scanner precludes any objection that the firm's product does not conform to the above-quoted specification. The agency further argues that the fact that the NCS Scorebox is less easily removed from the scanner or that the unit is more cumbersome is irrelevant since the specification does not demand that removal be easy or that the unit be small enough to be secured.

In reviewing an agency's technical evaluation, our Office will not independently determine the relative merit of an offeror's technical proposal, but will only examine the agency's evaluation to insure that it had a reasonable basis. Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285. In our opinion, HEI is merely questioning the agency's judgment as to the relative merit of NCS's proposal in this respect and has even agreed that, although perhaps a more difficult process, the NCS Scorebox can be removed from the scanner. HEI's mere disagreement with the Navy insofar as its evaluation of NCS's proposal does not, in our opinion, provide a legal basis for us to object to the award decision. Id.

Moreover, we disagree with the protester that the solicitation required more than was offered by NCS (i.e., that the specification required the Scorebox be easily removable and small enough to secure). In our opinion the solicitation did not impose these requirements and we view HEI's argument (that NCS's Scorebox should be disqualified as technically nonconforming) as tantamount to a demand that the specifications be read in a more restrictive manner than the agency has done. In this connection, we have noted in previous decisions of this Office that our role in resolving bid protests is to ensure that the statutory requirements for

"full and open competition" have been met. Thus, a protester's presumable interest as a beneficiary of a more restrictive reading of specifications is not protectable under our Bid Protest Regulations, absent evidence of fraud or willful misconduct of procurement officials. California Mobile Communications, B-224398, Aug. 29, 1986, 86-2 CPD ¶ 244. No such evidence has been proffered and, accordingly, we deny this basis of protest.

With respect to the security system offered by NCS, HEI argues that it does not provide for erasure of the scoring algorithms in the event that the system is tampered with. In particular, HEI contends that the central unit in the system is an Intel 8751, which is essentially a computer chip which is programmed with the scoring algorithms and contains a locking device to prevent access to the algorithms once the chip has been programmed. According to HEI, one of the central features of the Intel 8751 is that the device does not erase the algorithms when it is tampered with and that erasure can only be accomplished by exposing the device to ultraviolet light. Thus, HEI contends that the Intel 8751 fails to meet the requirement contained in the solicitation that the algorithms be erased upon any attempt to tamper with the unit.

The agency responds that it reasonably concluded that the product offered by NCS met the requirements of the solicitation's security specification which are as follows:

"The integrity of the security device/codelock cannot be violated by any mechanical or electrical/electronic device. The security device/codelock must have enough protections and checks that any attempt to tamper with it would be detected and the scoring algorithms would be destroyed or erased so that they could not be copied or viewed."

The agency urges principally that, while HEI feels that the product it offered was superior, the product offered by NCS was technically conforming and it could not reasonably conclude otherwise. Additionally, the agency urges us to consider the argument of HEI in light of what is technically reasonable in the field of security devices, arguing that virtually any security device can be compromised given sufficient effort and that, in evaluating proposals, its consideration of the various security devices offered was governed by such a standard.

As stated above, our Office will not independently determine the relative merit of an offeror's technical proposal, but

will only examine the agency's evaluation to ensure that it had a reasonable basis. Martin Advertising Agency, Inc., B-225347, supra. NCS's offer clearly indicates that its device provides a "security environment in which the algorithms cannot be read copied or otherwise modified by users of the tests" scored by the equipment. However, its offer does not specifically show that the equipment erases the scores if tampered with as required by the RFP. As we understand it, the Intel 8751 contains a security encryption code or "lock" which becomes operational at any attempt to tamper with the device. The process of "unlocking" the device, whether by an intruder or by an individual authorized to do so, causes the algorithms recorded on the device to be erased. In our opinion, this device satisfies the security requirement of the solicitation and we conclude that the agency acted reasonably in determining as much. Accordingly, this basis of protest is denied.

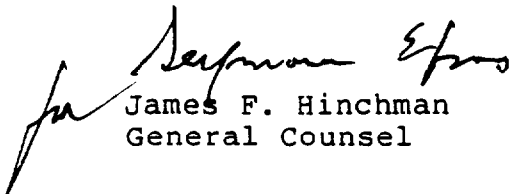
With respect to the question of NCS's expiring license to score the SCII, HEI essentially argues that the firm's offer should have been rejected on grounds that NCS was unable to meet the specification's requirement for a 3 year license on all pertinent software.

The agency on the other hand argues that the possible expiration of NCS's license to score the SCII is a matter of contract administration (since the licensing requirement is a technical specification) and thus not subject to our review.

We agree with the agency. The licensing requirement in the solicitation is a part of the technical specifications; it was contained in the solicitation's technical specifications, was not separately identified as a responsibility criterion as required by Federal Acquisition Regulation (FAR) § 9.104-2(a) and was therefore not a condition for award. Moreover, the protester does not contend otherwise. Here, NCS has unequivocally promised to perform in accordance with the technical specifications. As such, whether the equipment actually delivered by NCS meets the terms of the specifications contained in the solicitation (i.e. whether the firm, in the future, can obtain the necessary software it has promised to supply), is a matter of contract administration. Motorola Communications & Electronics, Inc., B-223715, Sept. 19, 1986, 86-2 CPD ¶ 325. We will not review this matter upon the merits since our Bid Protest Regulation, 4 C.F.R. § 21.3(f)(1) (1987), provide that such matters are the responsibility of the contracting agency and not this Office. Accordingly, we dismiss this ground of protest.

We note that the agency, prior to awarding the contract to NCS, was assured by NCS that it would meet the licensing requirement. Further, while the licensor, Consulting Psychologists Press, Inc., has given the 1-year notice required under its licensing agreement for termination, there is no indication that having received this Navy contract, NCS is precluded from negotiating a new agreement in the future; by not taking exception to the terms of amendment No. 0002, it has promised to do so by its offer.

The protest is dismissed in part and denied in part.

James F. Hinchman  
General Counsel